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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,260	12/21/2001	Robert J. Price	8350.1156-00	5013
7590 05/19/2005 Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street, N.W. Washington, DC 20005-3315			EXAMINER LOPEZ, FRANK D	
			ART UNIT 3745	PAPER NUMBER

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

**Application No.**

10/024,260

**Applicant(s)**

PRICE, ROBERT J.

**Examiner**

F. Daniel Lopez

**Art Unit**

3745

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

Applicant's arguments filed March 3, 2005, have been fully considered but they are not deemed to be persuasive.

Applicant's arguments with respect to claims 1-22 have been considered but are deemed to be moot in view of the new grounds of rejection.

In an interview with the applicant, the examiner indicated that the changes to claim 1 would overcome the 112 rejection and the art rejections of the cited prior art, and that a further search was needed to determine if the claims were allowable. In reviewing this case, it was determined that although these changes overcame the 112 rejection and the art rejection of Devier et al, it did not overcome the art rejection of Cobo et al (6,305,162). Originally the examiner viewed only that portion of the valve command (fig 4) from zero to the line passing through point 308. On considering the valve command passed the line passing through point 308, it is clear that Cobo et al (6,305,162) meets the claimed limitation.

Furthermore, applicant's drawing (fig 2) shows valve command lines (62, 66) which go from a smaller slope to a larger slope, as compared to a valve command line (60, 64, respectively) with a higher speed. Since the claims use the inclusive "comprising" and since applicant shows having only a part of a valve command having a smaller slope, as compared to a valve command line with a higher speed, Cobo et al (6,305,162), which shows only a part of the valve command having a smaller slope, as compared to the valve command line with a higher speed, meets the claimed limitation.

Due to this error on the part of the examiner, this rejection is non-final.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claim 20 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20 line 1-2 "the pump is a variable displacement pump" does not further limit claim 10, since claim 10 claims the same limitation (line 2).

***Claim Rejections - 35 USC § 102***

Claims 1-4, 6-20 and 22 are rejected under 35 U.S.C. § 102(f) as being anticipated by Cobo et al (6,305,162). It would appear that the sole inventor of the instant application is not the inventor of the subject matter of the above claims; since the sole inventor of the instant application is not listed as one of the inventors of Cobo et al, even though both are owned by Caterpillar; and the limitations of the above claims are disclosed in Cobo et al. Figure 4 shows two lines with higher (302) and lower (402) speeds. The lower speed has a lower slope than the higher speed, for a joystick position at the line passing through point 308 and above.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1, 2, 5, 7-13, and 16-22 are rejected under 35 U.S.C. § 103 as being unpatentable over Tordenmalm in view of. Tordenmalm discloses a motor (13) driving a pump (11), to deliver pressurized fluid to a hydraulic actuator (10) via a valve (12); whereint eh valve is controlled by an operator input (at 14), which is modified by a variable factor (K) depending on the difference between the pump (A) and reference (R) speeds (column 2 line 47-54)value. When the pump speed is sufficiently greater that the reference speed (R), the valve command is unchanged. When the pump speed is approaching or less than that the reference speed (R), the valve command is decreased by a. Since the valve command is reduced, it is interpreted to have a lower slope, as is the claims. Tordenmalm does not disclose that the pump is a variable displacement pump or that the operator input is a position of a lever.

Official notice is taken that it is well known to use a pressure compensated variable displacement pump to deliver pressurized fluid to hydraulic actuators, for the purpose of decreasing energy consumption of the system. It would have been obvious at the time the invention was made to one having ordinary skill in the art to use a variable displacement pump for the pump of Tordenmalm, for the purpose of decreasing energy consumption of the system.

Official notice is taken that it is well known to use a position of a lever as an operator input. It would have been obvious at the time the invention was made to one having ordinary skill in the art to use a position of a lever as the operator input of Tordenmalm, as a matter of engineering expediency.

Claim 21 is rejected under 35 U.S.C. § 103 as obvious over Cobo et al (6,305,162). Cobo et al (6,305,162) discloses all the elements of claim 21, including that the pump is a variable displacement pump (e.g. column 3 line 4-5, column 4 line 22-27), but does not disclose that the pump is a pressure compensated pump.

Official notice is taken that it is well known to make a variable displacement pump a pressure compensated pump, as one of a number of different control types of variable displacement pump. It would have been obvious at the time the invention was made to one having ordinary skill in the art to make the variable displacement pump of

Art Unit: 3745

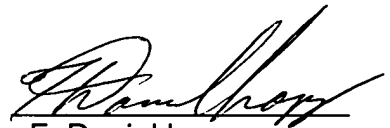
Cobo et al (6,305,162) a pressure compensated pump, as a matter of engineering expediency.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is (703) 308-0008. The examiner can normally be reached on Monday-Thursday from 6:30 AM -4:00 PM. The examiner can also be reached on alternate Fridays.

I will be moving to the new PTO campus in November. When I move, my new telephone number will be 571-272-4821.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on (703) 308-1044. The fax number for this group is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.

A handwritten signature in black ink, appearing to read 'F. Daniel Lopez', is written over a horizontal line.

F. Daniel Lopez  
Primary Examiner  
Art Unit 3745  
May 13, 2005